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## MMPA Bulletin - May/June 1996

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### What Should We Know Before We Free Willy?

Public and media interest in releasing captive cetaceans (i.e., orca whales and dolphins) to the wild has increased notably over the past two years as seen in recent fund-raising campaigns for "Keiko," "Lolita," the Sugarloaf Dolphin Sanctuary (SDS), and the "Welcome Home Bogie and Bacall Project". However, under the Marine Mammal Protection Act (MMPA), NMFS is entrusted by Congress to protect marine mammals in the wild. As such, the reintroduction of captive marine mammals into the wild must be done in a manner that protects wild stocks and populations as well as ensuring the survivability of an individual to be released (i.e. preventing the "take" of marine mammals). Presently, no scientific protocols exist for reintroducing captive marine mammals back into the wild. Therefore, NMFS has consistently stated in both press releases and responses to letters of inquiry, that scientific protocols must be developed through issuance of scientific research permits for bona fide scientific reintroduction projects which provide for public and scientific peer review.

The lack of documentation and scientifically established protocols and their critical importance for responsible reintroduction of any captive animal into the wild was acknowledged by the U.S. Congress in 1994 regarding dolphins held by the U.S. Navy. Although great media pressure was placed on Congressional members to make these dolphins available for release into the wild rather than placement in public display facilities, Congress did so by acknowledging that any release of these captive dolphins be done through scientifically accepted protocols, stating in the Conference Report of H.R. 4650 (P.L. 103-335) that:

*The conferees are informed that there are no scientifically established or accepted protocols for such releases. Moreover, documented success of previous attempts to reintroduce captive marine mammals to the wild is sparse. Accordingly, the conferees believe that any attempts at releasing Navy marine mammals to the wild should be pursued cautiously and on an experimental basis until scientifically sound protocols have been developed and reintroductions have proven*

*successful. The conferees recognize that the Department of Defense does not have the authority to allow the return of once-captive Navy marine mammals into the wild. This authority rests with the Department of Commerce, through the National Marine Fisheries Service. Accordingly, the conferees direct the Navy to cooperate with the Secretary of Commerce and the Marine Mammal Commission in developing rigorous scientific protocols for experimental releases. Given the potential for "takes" under the [MMPA] or the Endangered Species Act, the conferees direct that in no case shall any release be attempted unless authorized by a scientific research permit issued by the Secretary of Commerce under the appropriate statutory authority."*

Issues of concern surrounding the reintroduction of captive animals include disease transmission between released and wild individuals and stocks; unwanted genetic exchanges between introduced and endemic stocks/populations; the ability of the released animals to adequately forage and defend themselves from predators; and any behavioral patterns developed in captivity which could prove detrimental to the social structure of local populations as well as the social assimilation of the released animal.

The importance of these concerns as they apply to marine mammals has been underscored in recent years with a number of mass mortalities involving marine mammals along the coastlines of the U.S. and other areas around the world. Most of the mass mortalities involving cetaceans and pinnipeds (seals) have been the result of disease, including diseases not previously seen in the affected populations. With the limited knowledge currently available about marine mammal diseases, the need to prevent the introduction of disease into the wild is a very real and serious consideration. In addition, human-caused introductions of non-indigenous species to local habitats has had serious ecological impacts throughout the world. Because the captive cetaceans publicized for reintroduction are not endangered or threatened species (for which reintroduction to areas beyond their original genetic range is sometimes a consideration), there is concern over the long-term ecological impact of genetic mixing that would not have otherwise occurred without human interference.

The sparse history of rehabilitated and released captive cetaceans has provided limited documentation with questionable results. NMFS has acted on only two applications for permits to release dolphins. One project (1989) involved the initial capture of dolphins for a period of two years, followed by release to their original waters with on-going monitoring of their success. However, the other project (1987) was less quantifiable in its methodologies and resulted in only 8 sightings two months after the dolphins' release. No further sightings of the dolphins from this release have been made. In addition, this release project raised environmental awareness over potential impacts to local dolphin populations (as the female dolphin was pregnant) and other potential impacts on the ecology in the area. Internationally, a well known release project, "Into the Blue" (1992) lacks documentation of post-release success. More importantly, this project involved two Atlantic and one Pacific bottlenose dolphin that were released in the Turks and Caicos Islands, far from their stocks of origin, raising concern about genetic mixing. Another well known effort was an attempt in Australia (1992) to return captive aquarium dolphins, including some captive born, to the wild. The protocols for monitoring the dolphins behavior, acclimation, foraging skills, social-groupings, etc. were detailed and approached in a scientific manner. Although there was a clear effort to establish scientifically sound protocols that would be

available for repeatable projects in the future, this project resulted in a recapture of some of the dolphins due to starvation and declining health. Of the nine dolphins released by this project, three had to be recaptured, one was presumed dead (a calf), and no confirmed sightings were made of the remaining dolphins 43 days after their release.

With regard to "Keiko," "Lolita," and "Bogie" and "Bacall", NMFS has received no acceptable applications for scientific research permits to release these animals. Specifically with respect to the campaign to "Free Willy" to his native waters off the coast of Iceland, NMFS has no knowledge that the Icelandic government would approve such a reintroduction. Regardless of an application's bona fide scientific merits, no permit could be issued without the foreign government's consent to allow the animal to be exported and released into their jurisdictional waters.

In May 1996, two unauthorized releases of captive dolphins to the wild occurred. On May 16, the open water pen holding Bogie and Bacall of the "Welcome Home Project" was vandalized, allowing the two dolphins to escape into the Indian River south of Melbourne, Florida. On May 23, key personnel at the SDS illegally transported and released two of the ex-Navy dolphins, "Luther" and "Buck," into Gulf waters off of the Florida Keys. NMFS and stranding network officials immediately began receiving reports of Luther begging from boats and jet skis in the area. Within two weeks Luther and Buck were separately rescued. Both were found in a state of dehydration and had suffered lacerations. Buck, who was rescued last, was visibly emaciated and considerably underweight. Efforts to find Bogie and Bacall continue.

On June 7, the remaining Navy dolphin at SDS, "Jake," was removed from the facility by NMFS and the Animal and Plant Health Inspection Service after SDS's license was suspended due to repeated violations of the Animal Welfare Act.

For more information, contact the [Permits Division](#) at (301) 713-2289.

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## **General Authorizations Make Scientific Research Easier**

The 1994 Amendments to the MMPA established a General Authorization program for bona fide scientific research which does not exceed Level B harassment of marine mammal species not listed under the Endangered Species Act (ESA). The 1994 Amendments statutorily defined the term "harassment" as any act of pursuit, torment, or annoyance which: (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited, to migration, breathing, nursing, breeding, feeding or sheltering (Level B harassment).

The Interim Final Rule for the General Authorization (GA) was published in the Federal Register

on October 3, 1994. The GA offers a 30-day streamlined process for authorizing Level B harassment, in contrast to the more lengthy public and scientific review regarding the permit process. The GA requires the principal investigator to submit a Letter of Intent detailing the proposed activities. Upon determination that the activities are bona fide and will not exceed Level B harassment, NMFS will issue a Letter of Confirmation. Although this process will provide researchers a more efficient means of obtaining authority to conduct scientific research projects with low levels of impact, the streamlined process should not be interpreted as streamlining the information required in the Letter of Intent. Because the GA process does not allow for the give and take involved in scientific review, the Letter of Intent must be as detailed as possible, particularly with regard to the purpose of the research, methodology, how the research qualifies as bona fide, and the experience and qualifications of the personnel identified to conduct activities under the GA.

From November 1994 to December 31, 1995, NMFS received 27 Letters of Intent to conduct Level B harassment of marine mammal species or stocks for consideration under the GA. Of these, 19 were issued a Letter of Confirmation and 8 were returned for insufficient information, failure to qualify as bona fide research, or inclusion of Level A harassment activities or marine mammal species listed under the ESA for which the General Authorization does not apply.

The GA program has now been in place for over a year. Currently, activities which qualify under the GA include photo-identification studies, behavioral observations, and vessel and aerial population surveys. During the past year, NMFS and researchers alike have had an opportunity to review the process and assess areas for improvement. The current controversial nature of acoustic studies on marine mammals warrants special attention for consideration under the GA. Presently, only passive acoustic research (e.g. listening to marine mammals via hydrophones) is regarded as Level B harassment. However, flexibility for active acoustic research such as play-back experiments and pinger studies, may merit consideration as Level B harassment activities. These research techniques are being explored for use in reducing incidental interactions between marine mammals and commercial fishing operations. Additional concerns have been raised regarding requests to modify GAs, and how this might jeopardize the intent and integrity of the GA process if allowed to evolve into a parallel permit process which includes amendment provisions. NMFS will evaluate these issues and the comments received on the interim rule for future publication of a Final Rule.

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## **Take Reduction Teams Are Making Progress**

The 1994 Amendments to the MMPA established an integrated process for NMFS to manage marine mammal interactions with commercial fishing operations. In the last two years, NMFS has

developed stock assessment reports for every marine mammal that occurs in U.S. waters, and has classified each U.S. fishery according to its level of marine mammal serious injury or mortality. NMFS must now develop Take Reduction Plans (TRP) for those fisheries with the greatest impact on marine mammal stocks (Category I and II fisheries). TRP's will assist in the recovery or prevent the depletion of strategic marine mammal stocks by outlining strategies for reducing the number of marine mammals incidentally taken in the course of commercial fishing operations.

TRP's are to be developed by NMFS with the help of Take Reduction Teams (TRT). These teams are to be made up of individuals who represent the span of interests impacted by the strategies to reduce takes, including commercial and recreational fishing industries, fishery management councils, interstate commissions, academic and scientific organizations, state officials, environmental groups, Native Alaskans or other Native American interests if appropriate, and NMFS representatives.

The immediate goal of a Take Reduction Plan is to reduce, within 6 months of its implementation, the incidental take of marine mammals to the levels below the Potential Biological Removal Level, or PBR. The long term goal of the plan is to reduce, within 5 years of its implementation, the incidental take of marine mammals to insignificant levels approaching zero mortality and serious injury rates.

Once notice of the team's formation has been published in the Federal Register, the team has 6 months to develop a draft TRP. The draft TRP must be approved by all members on the team before being forwarded to NMFS. NMFS has 60 days to publish the team's draft plan, including any proposed changes to the plan. The public then has 90 days to review the plan and provide comments to NMFS on the TRP and proposed regulations. If the TRT cannot come to a consensus on a draft plan, NMFS has 8 months from the date the team was formed to develop a proposed plan and implementing regulations for public comment. NMFS can use the team's deliberations as the basis for its proposed TRP. After the close of the comment period on the proposed plan and implementing regulations, NMFS has 60 days to publish a final plan and final regulations.

Regulations to implement a plan may include, but are not limited to, fishery-specific limits on incidental and serious injury and mortality, time-area restrictions on fishing, the use of alternative fishing gear or techniques, the development of such gear or technology, the convening of expert skippers panels, efforts to educate commercial fishermen on the importance of reducing incidental takes, and a monitoring program to determine the effectiveness of take reduction measures.

To date, three TRTs have been established, and one more is scheduled to be in place by the end of summer:

- ! The Gulf of Maine harbor porpoise TRT
- ! The Pacific Offshore Cetacean TRT
- ! The Atlantic Offshore Cetacean TRT
- ! The Atlantic Large Whale TRT (summer 1996)

Each team is being facilitated by a contracted dispute resolution specialist.

The Gulf of Maine harbor porpoise TRT was formed February 12, 1996, and is focused on reducing the incidental take of harbor porpoise in the Gulf of Maine groundfish sink gillnet fishery. The team has 23 members and met a total of four times. The team reached a preliminary consensus on a draft plan at it's last meeting on May 23-24, 1996. The plan built upon Amendment 7 to the Gulf of Maine Fishery Management Plan for groundfish by expanding closures and using acoustic deterrent devices to further reduce harbor porpoise bycatch. The team expects to forward its plan to NMFS by August 12, 1996.

The Pacific Offshore Cetacean TRT was also formed on February 12, 1996, and is focused on reducing the incidental take of several strategic marine mammal stocks in the California/Oregon swordfish and thresher shark drift gillnet fishery. The team has 15 members and has met four times to date. Their fifth meeting, on June 25-27, 1996, in Santa Monica, California (see box below), is open to the public. A scoping meeting to encourage public participation in the process and to obtain comments on alternatives that will be considered by NMFS prior to publishing a final TRP, will be held from 7 to 10 PM on Tuesday, June 25th at the same location. The team expects to reach a consensus on a draft plan at their final meeting and forward it to NMFS by August 12, 1996.

The Atlantic Offshore Cetacean TRT was formed on May 24, 1996, and is focused on reducing the incidental take of several strategic marine mammal stocks in the Atlantic pelagic longline, driftnet, and pair trawl fisheries for swordfish and tuna. The team has 18 members, has had one meeting to date, and will have their next meeting on July 30-31, 1996, at the Government Center Holiday Inn (see box below). Meetings are open to the public. The team will meet a total of four times before forwarding a draft plan to NMFS by November 24, 1996.

The Atlantic Large Whale TRT is currently being established and will focus on reducing the incidental take of endangered and threatened whales in the South Atlantic shark gillnet fishery and various lobster and crab pot fisheries. The team will probably meet four times before submitting a draft plan to NMFS.

Teams will be reconvened 6 months after the final plan has been implemented , and every 6 months to a year thereafter to monitor the implementation of the plan until NMFS has determined that the goals of the plan have been reached.

For more information regarding take reduction plans and take reduction teams, contact [Mike Payne](#) or [Vicki Cornish](#) at (301) 713-2322.

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## **Captive Care Standards for Marine Mammals Under the Animal Welfare Act**

Between April 1-3, 1996, NMFS staff were included as non-voting observers to the U.S. Department of Agriculture-Animal and Plant Health Inspection Service's (USDA-APHIS) Negotiated Rulemaking for marine mammal captive care standards under the Animal Welfare Act (AWA). This Federal advisory committee consists of several voting and nonvoting ("observer") members. NMFS took this opportunity to suggest that the advisory committee address certain practices authorized under the AWA that have the potential of impacting marine mammals in the wild which are under the jurisdiction of the MMPA. Specifically, open-water pens and releases of captive marine mammals to the wild for various purposes (i.e., swim-with programs, filming, and scientific research) have the potential of facilitating disease transmission and unwanted genetic exchange between captive animals and those in the wild.

NMFS recommended that facilities with openwater pens be required to have closed-water system quarantine pools. In addition, NMFS recommended that the USDA-APHIS proposed rule include an explicit reference to the MMPA requirement that captive marine mammals may only be released to the wild under a scientific research permit issued by NMFS. Also, NMFS suggested that the AWA regulations which allow the public to feed captive marine mammals (i.e., feeding or petting pools) be amended to require that the public be informed that feeding and interacting with marine mammals in the wild is harmful to the animals; why it is harmful, and that it is prohibited under Federal law. The recommendations from this negotiated rulemaking are under consideration by USDA/APHIS for possible publication of a proposed rulemaking on the AWA care and maintenance standards.

For more information, contact [Trevor Spradlin](#) at (301) 713-2289.

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## **NMFS Enforcement Initiates Voluntary Compliance Program**

In the latter part of 1995, NMFS Office of Enforcement adopted the Voluntary Compliance Program (VCP) as a national initiative to proactively meet the enforcement challenges facing the management of the nation's marine resources. In 1995, the annual enforcement report recorded 2,300 new investigations. Based on annual statistics and trends, this number is predicted to increase significantly by the end of 1996. With smaller budgets available for implementing NMFS expanding responsibilities, and newly emerging activities impacting marine resources, NMFS Office of Enforcement adopted the VCP as a supplement to the more traditional techniques of enforcement.

Based on community-oriented, problem-focused policing models, the VCP rests on education and awareness of enforcement issues through teamwork and partnerships at the grassroots level. Through cooperative approaches with stakeholders in a marine resource, NMFS hopes to enlist their participation in custom tailoring solutions to marine resource management problems unique